No. 82-791

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

TEACHERS INSURANCE AND ANNUITY ASSOCIATION, and
COLLEGE RETIREMENT EQUITIES FUND,
Petitioners,

v.

DIANA L. SPIRT, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF AMERICAN COUNCIL OF LIFE INSURANCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

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QUESTIONS PRESENTED

The Second Circuit, in the decision below, found that Long Island University ("LIU") and the petitioners, independent insurers which provide annuity contracts to LIU employees, violated Title VII because benefits under the annuity contracts are calculated by using sex-specific mortality tables which result in female employees receiving smaller monthly annuity payments than similarly situated males. This decision is in direct conflict with the subsequent decision of the Sixth Circuit in *Peters v. Wayne State University*, Nos. 79-1658, -1670, -1671 (6th Cir. Oct. 14, 1982), *petition for cert. filed, (No. 82-794)*. Some of the issues raised in this case are related to those presented in *Norris v. Arizona Governing Committee*, 671 F.2d 330 (9th Cir. 1982), *cert. granted*, 51 U.S.L.W. 3287 (No. 82-52), which is currently pending before this Court.

The questions presented in this case, which are not presented in *Norris*, include:

(1) Whether Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e *et seq.*) applies to third-party insurers who do not have an employer-employee relationship with the plaintiff-employee.

(2) Whether the McCarran-Ferguson Act (15 U.S.C. §§ 1011 *et seq.*) precludes applying Title VII to the insurance activities involved herein.

(3) Whether the lower courts granted impermissible retroactive relief.

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BRIEF OF AMERICAN COUNCIL OF LIFE INSURANCE AS AMICUS CURIAE IN SUPPORT OF THE PETITION

This brief is filed on behalf of the American Council of Life Insurance, as amicus curiae, in support of the petition for certiorari. Consent from counsel for all parties has been filed with the Clerk of this Court.

INTEREST OF THE AMICUS

The American Council of Life Insurance ("Council") represents the interests of 555 member life insurance companies, including most of the major life insurers in the United States. Its members currently hold more than ninety-five percent of the life insurance in force in legal reserve life

insurance companies in the United States. In addition, member companies account for ninety-nine percent of the insured private pension plan business in the United States. Thus, the Council has a direct and immediate interest in insurance practices, in general, and in the sound administration of pension plans, in particular.

The pension industry is large and affects many individuals. At the end of 1980, 26.1 million Americans were covered by private pension plans administered by U.S. legal reserve life insurance companies. See American Council of Life Insurance, 1981 Pension Facts. Assets backing these plans reached $165.8 billion, an increase of 19 percent over the immediately preceding year. *Id.*

Virtually all insurance companies, including members of the Council, have historically classified risks according to sex in calculating benefits under defined contribution plans, to account for the well recognized fact that, as a class, women live longer than men. Therefore, the decision below prohibiting the use of sex-specific tables will directly affect the current and future business operations not only of the petitioners (TIAA-CREF), but of all insurance companies. Indeed, such a judicially forced break with the past will revolutionize the insurance industry.

The Council is concerned about the continued viability of employee retirement plans. An internal study conducted by the Council estimates that a prohibition against using sex-specific actuarial tables could increase the costs of retirement plans by as much as two billion dollars per year. The Superintendent of Insurance of New York has estimated that a total of $1.9-$2.1 billion would be needed to equalize the results of using sex-specific tables in New York funded pensions plans after the date of this Court's decision in *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702, enough possibly to bankrupt the system. Lewis, *Manhart et Sequentia: A 20 Billion Dollar Cost to Local Governments?*, 7 Employee Benefits Journal 8, 13 (1982).

In any aspect of insurance, accurate risk classification is essential to maintaining the financial integrity of a finite fund subject to partial liquidation upon the occurrence of events such

as death or disability which are unpredictable on an individual basis. No aspect of insurance, including pensions, can proceed entirely on an "individual" basis, since the essence of insurance is the sharing of risks among a group. An individual's sex, like age, provides an objective statistical basis for accurately assessing various risks presented by that individual. There is, indeed, no more reason for excluding sex as a basis for calculating risk then there is for excluding age—or, to put it another way, the use of age in calculating pension benefits is no more "individual" than the use of sex.

As a result of several lower court decisions, including the decision below, the insurance industry's traditional and historically-accepted practice of using sex-specific mortality tables has been cast into doubt. Because of its concern that employee retirement plans continue to be administered on the basis of sound actuarial principles, the Council has a direct and immediate interest in the questions presented.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is not yet reported; it is reproduced in the Appendix to the Petition. The United States District Court for the Southern District of New York issued five opinions in this case: (1) January 23, 1976 (not officially reported); (2) July 1, 1976 (reported at 416 F. Supp. 1019); (3-4) August 9 and September 12, 1979 (reported at 475 F. Supp. 1298); and (5) March 19, 1982 (reported at 93 F.R.D. 627). They are set forth in the Appendix to the Petition.

JURISDICTION

The judgment below was entered on September 29, 1982. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 provides, in pertinent part:

> It shall be an unlawful employment practice for an employer—
>
> > (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

42 U.S.C. § 2000e-2(a)(1).

The McCarran-Ferguson Act provides, in relevant part:

> [n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance . . . .

15 U.S.C. § 1012(b).

STATEMENT

Teachers Insurance and Annuity Association ("TIAA") and College Retirement Equities Fund ("CREF") provide insurance products (principally annuities) through retirement plans which cover faculty and staff members in 85% of all private four-year colleges and universities and in over 40% of all public colleges and universities in the United States. More than 700,000 employees at over 3,400 institutions participate in the TIAA-CREF system.

TIAA is a non-profit, legal reserve life insurance company which was organized in 1918 by the Carnegie Foundation for the Advancement of Teaching. TIAA provides annuities

especially designed for employees of academic institutions. CREF, a companion organization, was created in 1952 by a special act of the New York State Legislature in order to allow investment of pension funds in financial instruments other than those traditionally permissible for annuity funds like TIAA. Both TIAA and CREF are closely regulated by the New York State Insurance Department and are subject to the New York Insurance Law.

Respondent, Diana L. Spirt, is a tenured professor at Long Island University ("LIU"). LIU has adopted a TIAA-CREF administered retirement plan, in which respondent is required to participate. Under the plan, the employee contributes 5% of his or her yearly salary. In addition, LIU contributes 5% of the first $4,800 of an employee's salary and 11% of an employee's earnings in excess of that amount. Thus, contributions by and on behalf of similarly situated male and female employees are equal in amount.

Each contribution received by TIAA-CREF purchases retirement benefits pursuant to separate annuity contracts between TIAA-CREF and each individual participant. (The educational institution is not a party to the annuity contract.) The contract rights vest immediately and irrevocably in the individual employee. All annuity accumulations are "portable," i.e., the employee retains his or her ownership interest in the individual account whenever he or she transfers employment, in or out of higher education.

At retirement, an employee may select from among several annuity payment options.[1] If a "single life option" is selected,

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[1] The Second Circuit described the available options (Pet. App. 5a n.1):

> Although it is assumed that most TIAA-CREF participants will receive their retirement benefits on a monthly basis, an annuitant may choose to receive annuity payments quarterly, semi-annually, or annually, rather than monthly .... Also, rather than simply receiving benefit payments for the duration of one's own life (a single life annuity), a retiree can opt for a life annuity with a ten or twenty year guaranteed period, or for a joint-life option, under which benefits will continue throughout the lives of both the retiree and a named beneficiary.

the employee will receive a specified amount on a monthly basis for life.[2] In order to price their product accurately, and to ensure their continued solvency, TIAA and CREF use sex-specific mortality tables in calculating the amount of the monthly benefits. As a consequence, female participants receive smaller monthly payments than similarly situated male retirees, reflecting the fact that women live longer than men. The actuarial values of the annuity plans are identical for men and women.

Proceedings Below

Respondent, Diana L. Spirt, initiated this action against TIAA and CREF on April 15, 1974, alleging that the use of sex-specific mortality tables violated Title VII (42 U.S.C. § 2000e *et seq.*), The Equal Pay Act (29 U.S.C. § 206(d)), and the Fourteenth Amendment. On July 1, 1976, the district court

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[2] The court of appeals described the process by which the monthly payment is calculated (Pet. App. 4a-5a):

> After retirement, TIAA provides a life-long fixed dollar annuity, which pays the retired plan participant a specified and definite amount of benefit on a monthly basis. CREF, on the other hand, provides its annuitants with a variable annuity. Under this plan the annuitant receives a periodic payment, the amount of which reflects the results of CREF's investment policies. Plan participants may allocate their contributions between TIAA and CREF in whatever proportions they choose, and under certain conditions, they may transfer contributions from one system to the other. Upon an employee's retirement, both the amount of the fixed benefit to be received monthly from TIAA and the amount of CREF units to be used in determining the amount of benefits to which an employee will be entitled each year under the CREF variable-annuity program are calculated, and the retiree's contract with TIAA-CREF is "settled."

Under this system (Pet. App. 5a n.2),

> a retiree has no right to receive a lump sum payment for the full value of contributions paid into the fund. However, upon retirement a participant may choose to receive up to 10% of accumulated contributions for use in dealing with transitional costs. Receipt of such a payment results, of course, in a corresponding decrease in the amount of moneys available for annuity payments.

resolved certain jurisdictional and procedural issues; this resulted, *inter alia*, in LIU being joined as a party under Fed. R. Civ. P. 19(a). *Spirt v. Teachers Insurance and Annuity Association*, 416 F. Supp. 1019 (S.D.N.Y. 1976).

After entering into a stipulation of facts, the parties filed cross motions for summary judgment. Although the district judge granted TIAA's summary judgment motion on the ground that it was not subject to Title VII because of the McCarran-Ferguson Act, the court granted respondent's motion for summary judgment as to CREF and LIU on the Title VII issue. *Spirt v. Teachers Insurance and Annuity Association*, 475 F.Supp. 1298 (S.D.N.Y. 1979).

The district court found that (1) TIAA's use of sex-specific mortality tables fell squarely within the "business of insurance" as defined by this Court in *SEC v. National Securities, Inc.*, 393 U.S. 453, (2) Title VII did not "specifically relate to the business of insurance," and (3) "application of Title VII to TIAA in the instant case would invalidate, impair, or supersede New York law regulating the business of insurance." *Spirt*, 475 F. Supp. at 1304. The district court, however, relying on *SEC v. Variable Annuity Life Insurance Co.*, 359 U.S. 65, held that the McCarran-Ferguson Act did not shield CREF from the constraints of Title VII because the variable annuities offered by CREF lacked any investment risk-taking, and thus, according to the court, did not constitute the "business of insurance."

On the Title VII issue, the court held that CREF was an "employer" within the meaning of § 703(a), and that, therefore, CREF would be liable, along with LIU, for any violation of the Act. *Spirt*, 475 F. Supp. at 1308. Then, the district court applied the broad principles of *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702, without recognizing the qualifications stated in that case, and concluded that, because the use of sex-specific mortality tables resulted in women receiving smaller monthly annuity payments, both LIU and CREF had discriminated against women in violation of Title VII. *Spirt*, 475 F. Supp. at 1307.

In fashioning its decree, the district court granted what it characterized as purely prospective relief. *Spirt*, 475 F. Supp.

at 1315. The court enjoined CREF from using sex-specific mortality tables in calculating annuity benefits for all participants retiring on or after May 1, 1980 (thus subjecting accumulations made over many prior years to the new rules), and enjoined LIU from making contributions on behalf of its employees and from requiring its employees to contribute to any retirement plan which continued to use sex-specific mortality tables in calculating periodic payments after June 1, 1980. 475 F.Supp. at 1316.[3]

All of the parties took appeals to the Second Circuit. The court of appeals then granted the parties' request for a limited remand to the district court for consideration of TIAA-CREF's "good faith reliance" defense to the imposition of retroactive relief and to permit respondent to join Albert B. Lewis, the New York State Superintendent of Insurance, as a party to the *Spirt* action. After further motions and the filing of the supplemental complaint against Superintendent Lewis, the district court filed another opinion. *Spirt v. Teachers Insurance and Annuity Association*, 93 F.R.D. 627 (S.D.N.Y. 1982). The district court, *inter alia*, rejected TIAA-CREF's good faith reliance defense and granted a motion to dismiss the respondent's supplemental complaint against Superintendent Lewis.

On appeal, the Second Circuit affirmed in part, reversed in part, and remanded. The court of appeals, after concluding that both TIAA and CREF were "employers," affirmed the district court's finding that the use of sex-specific mortality tables violated Title VII. The court reversed the district court's finding that TIAA was exempt from compliance with Title VII by virtue of the McCarran-Ferguson Act. On the relief issue, the court of appeals affirmed the district court's order and extended its application to TIAA.

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[3] On February 13, 1982, the EEOC filed a complaint against Superintendent Lewis in the United States District Court for the Southern District of New York. *Equal Employment Opportunity Commission v. Lewis*, 81 Civ. 881 (RJW). (See description of the *Lewis* litigation in *Spirt v. Teachers Insurance and Annuity Association*, 93 F.R.D. 627, 633 (S.D.N.Y. 1982)). In the *Lewis* action, the EEOC seeks to enjoin Superintendent Lewis from applying New York Insurance Law in a manner that the EEOC contends is inconsistent with the Fourteenth Amendment, Title VII, and the Equal Pay Act.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Is in Direct Conflict with the Decision of the Sixth Circuit in *Peters v. Wayne State University.*

A little over two weeks after the Second Circuit's decision in this case, the Sixth Circuit, in a case likewise involving a TIAA-CREF administered retirement plan, held that Title VII does not prohibit an insurance company from operating, or an employer from selecting, a retirement plan under which the size of monthly annuity payments is calculated from sex-specific mortality tables. *Peters v. Wayne State University,* Nos. 79-1658, -1670, -1671 (6th Cir. Oct. 14, 1982), *petition for cert. filed* (No. 82-794). The Sixth Circuit found that the district court's characterization of TIAA-CREF as an "employer" for purposes of Title VII was clearly erroneous. The court stated:

> Teachers Annuity is an insurance company providing a service to Wayne State and Wayne State's employees. *Manhart* expressly held, "[Title VII] was not intended to revolutionize the insurance and pension industries." 435 U.S. at 717. We decline to hold that an insurance company may become liable under Title VII simply by furnishing its services to a Title VII employer.

(Pet. App. 139a.)

The Sixth Circuit then considered whether Wayne State had violated Title VII by choosing TIAA-CREF's plan for its employees. Although it asserted that Wayne State would have been liable if the retirement plan had discriminated against women, the court held: "the use of sex-segregated mortality tables to calculate retirement annuities does not violate Title VII if the actuarial value of the annuities is equal for similarly situated women and men." (Pet. App. 140a.) Noting that Title VII requires a showing of intentional discrimination in a disparate treatment case, the court found that the plaintiffs "had not demonstrate[d] at trial that Wayne State's motivation was discriminatory or improper in any way." (Pet. App. 141a.) In addition, the court found that Wayne State had not violated

Title VII under a disparate impact analysis. There was no discriminatory effect because "[t]he retirement plan is not worth more to men than to women." (Pet. App. 144a.)

The Sixth Circuit's decision in *Peters* is in direct conflict with the Second Circuit's decision in *Spirt*. As a consequence, TIAA and CREF are subject to conflicting federal court of appeals decisions. In addition, these decisions directly affect all other insurance companies engaged in writing retirement annuities, and have thus contributed to the confusion and uncertainty which exists in the entire insurance industry as to the legality of using sex-specific mortality tables for these policies.

II. The Questions Presented by the Decision Below Will Not Be Resolved in *Norris*.

On October 12, 1982, this Court granted a petition for a writ of certiorari in *Arizona Governing Committee v. Norris* (No. 82-52). In *Norris*, this Court will be faced with a variety of issues arising from the insurance industry's practice of using sex-specific mortality tables.

In *Norris*, the Ninth Circuit relied on this Court's decision in *Manhart* in finding that the State of Arizona, in establishing a voluntary deferred compensation plan, violated Title VII by contracting with private, independent insurance companies which use sex-specific actuarial tables. The petition for a writ of certiorari in *Norris* raises a number of questions, most of which involve the scope of this Court's holding in *Manhart*. The questions presented include: (1) whether Title VII is violated when an employee savings plan which is entirely voluntary makes available to women an annuity option of equal actuarial value to that offered men if the annuity plan results in smaller periodic payments to women, (2) the scope of *Manhart's* open market exception, (3) whether *Manhart* should be broadly construed to impose liability on an employer for the practices of independent insurance companies, and (4) whether, in a

disparate treatment case, an employer can violate Title VII despite a specific finding that there was no intent to discriminate.

Norris does not, however, present several issues of great significance to the insurance industry which are presented by *Spirt*. Because no insurance companies were parties in *Norris*, that case will not resolve one of the questions on which the Second and Sixth Circuits directly conflict, i.e., whether an insurance company may become liable under Title VII simply by furnishing its services to a Title VII employer. Also, *Norris* will not answer the McCarran-Ferguson Act question which is so graphically presented by *Spirt*. And this issue—whether Title VII, which does not specifically mention insurance, applies to the insurance practices in question—is of profound importance. The fact that the Superintendent of Insurance of the State of New York was made a defendant in *Spirt* illustrates the risk that the application of Title VII to the practices in question will impair the states' traditional authority to regulate the "business of insurance."

It is apparent that *Norris* will not resolve issues that are of fundamental importance to the insurance industry. It is, therefore, highly desirable for this Court to provide guidance on the additional questions raised by this case, i.e., (1) whether an independent insurance company risks Title VII liability when it offers annuity plans which use sex-specific mortality tables to employees of Title VII employers, (2) whether, despite the McCarran-Ferguson Act, an insurance company which administers programs approved by a state insurance commission risks liability under Title VII or other federal statutes which do not specifically relate to insurance, and (3) whether the relief granted by the court below is impermissibly retroactive, contrary to this Court's direction in *Manhart*.

In order that these questions may be resolved, this Court should grant the petition and set the case for argument on the same day as *Norris*. Otherwise, the uncertainties which now exist not only for TIAA-CREF but for other companies throughout the insurance industry will persist to the detriment of the companies and their policyholders.

III. The Questions Presented by the Decision Below Are of Substantial Public Importance.

A. By Extending Title VII to Third-Party Insurers, the Decision Below Has Greatly Expanded the Scope of *Manhart* and Threatened to Revolutionize the Insurance Industry.

As this Court has recognized by granting certiorari in *Norris*, the questions presented by the insurance industry's traditional practice of using sex-specific mortality tables are of substantial public importance. This brief will not repeat the arguments made in the *Norris* petition or in the Council's Amicus Brief in support of that petition which explain the importance of the issues presented in *Norris*.[4] It must be emphasized, however, that the issues raised by the decision below which are *not* presented in *Norris* are also of critical importance to the insurance and pension industries and to the individuals who participate in retirement plans.

Since this Court's decision in *Manhart*, the lower federal courts have struggled with its implications in a wide variety of contexts. As the First Circuit has noted: "Whether by accident, or design, *Manhart* brought to the Court the case that presented the fewest difficulties, and the most conspicuous discrimination, if discrimination there were." *Equal Employment Opportunity Commission v. Colby College*, 589 F.2d 1139, 1143 (1st Cir. 1978). Recognizing that *Manhart* had potentially far-reaching implications, this Court, in carefully limiting the scope of its holding, stated: "we do not suggest that ... [Title VII] was intended to revolutionize the insurance and pension industries. All that is at issue today is a requirement that men and women make unequal contributions to an employer-operated pension fund." *Manhart*, 435 U.S. at 717. Since *Manhart*, the lower

[4] It is possible that *Norris*, if it is decided on one of the "threshold" questions it presents, will not resolve the fundamental question at stake in many of the post-*Manhart* cases, i.e., whether the use of sex-specific mortality tables in calculating monthly annuity payments constitutes discrimination which violates Title VII. It is of great importance to the insurance and pension industries that this Title VII issue be decided. Granting the petition in this case will make it more likely that this issue will be addressed.

federal courts have been faced with issues which do threaten to revolutionize the insurance industry. The *Norris* case currently before this Court will resolve some of these problems. Other issues which are squarely presented by the decision below will, however, remain undecided.

As this Court stated in *Manhart*: "Title VII and the Equal Pay Act primarily govern relations between employees and their employer, not between employees and third parties." *Manhart*, 435 U.S. at 718 n.33. The decision below, however, held that TIAA and CREF were subject to Title VII. In *Peters*, the Sixth Circuit, after stating that the district court's characterization of TIAA and CREF as "employers" was clearly erroneous, "decline[d] to hold that an insurance company may become liable under Title VII simply by furnishing its services to a Title VII employer." (Pet. App. 139a.) The Second Circuit's contrary holding would, without question, revolutionize the pension and insurance industries. This conflict will not be resolved in *Norris*. The need for this Court's consideration of the issue could not be more clear.

B. The Decision Below Raises an Important Issue Concerning the Rights of the States, under the McCarran-Ferguson Act, to Regulate the "Business of Insurance" Free from Federal Interference.

The McCarran-Ferguson Act provides, in pertinent part:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance . . . .

15 U.S.C. § 1012(b). This Act was intended to preserve the states' traditional authority to regulate the insurance business. In the absence of a clear expression of congressional intent, state regulation of the insurance business should not be impaired. As this Court has stated:

> Obviously Congress' purpose was broadly to give support to the existing and future state systems for

> regulating and taxing the business of insurance . . . by removing obstructions which might be thought to flow from [congressional] power, *whether dormant or exercised,* except as otherwise expressly provided in the Act itself or in future legislation.

Prudential Insurance Co. v. Benjamin, 328 U.S. 408, 429-30 (footnote omitted; emphasis added).

The court of appeals, by giving an unduly narrow reading to the McCarran-Ferguson exemption, has disrupted the federal-state balance which the Act establishes, and has substantially eroded the states' traditional authority to regulate the insurance business.

In fact, the court of appeals' approach to the McCarran-Ferguson Act question stands the statute on its head. The court stated:

> We find, based on the historical context, the legislative history, and judicial interpretations of that history, that Congress, in enacting a statute primarily intended to deal with the conflict between state regulation of insurers and the federal antitrust laws, had no intention of declaring that subsequently enacted civil rights legislation would be inapplicable to any and all of the activities of an insurance company that can be classified as "the business of insurance."

(Pet. App. 18a.) In addition, the court relied on the important federal policy articulated by Title VII and Title VII's general preemption provision to support overriding the McCarran-Ferguson Act exemption.

There is, however, nothing in the case law which requires a finding that Congress, at the time it passed McCarran-Ferguson, specifically intended to displace a *subsequently* enacted federal statute that impairs a state's regulation of insurance. On the contrary, the Act, on its face, establishes that the conflicting federal statute will not displace the state regulatory scheme unless it "specifically relates to the business of

insurance." Likewise, no balancing of interests is required. The McCarran-Ferguson Act also expresses important policies, and its language, rather than a federal court's resolution of a perceived clash of interests, should control.

A general preemption provision fails to satisfy the statutory requirement that a conflicting federal statute "*specifically* relate to the business of insurance." There is no specific mention of insurance in the Civil Rights Act of 1964 or in any of the related statutes. A court's desire to effectuate what it perceives as a paramount federal interest cannot justify a reordering of the federal-state balance which the McCarran-Ferguson Act is intended to protect. As the district court in this case recognized, the application of Title VII to a long-standing insurance practice, i.e., the use of sex-specific actuarial tables, threatens to "invalidate, impair, or supersede . . . [state] law regulating the business of insurance." 475 F. Supp. at 1304.

Under the Second Circuit's view of the McCarran-Ferguson Act, the "business of insurance" would potentially be subject to a wide range of federal legislation. This Court should grant the petition to prevent federal interference with the states' traditional authority to regulate the insurance industry.

CONCLUSION

The questions presented in this case are of substantial public importance. There is a direct conflict between this case and the Sixth Circuit's decision in *Peters*, and this case provides a means for the consideration of a full range of issues related to those involved in *Norris*, in which this Court has already granted certiorari.

The petition for a writ of certiorari should be granted, and the case assigned for argument on the same day as argument is heard in *Norris*.

Respectfully submitted,

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